IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

Description of case

Petition No. 744 of 2003, decided on 27.08.2003

Sohan Lal ---Petitioner

Vs.

Additional District Judge

& another ---Respondents

A.F.R. (Approved for reporting)
~~Not approved for reporting~~

Date 17.09.2003

Initials of Judge

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 744 (M/S) OF 2003

CIVIL SIDE

Sohan Lal …….. Petitioner

Versus

Additional District Judge & another ……. Respondents

Hon'ble Rajesh Tandon J.

By the present writ petition the petitioner has challenged the order passed by the first Additional District Judge, Haridwar dated 17.7.2003.

The facts giving rise to the present writ petition are that an application under Section 21(1)(a) of U.P. No. XIII of 1972 was filed seeking release of the accommodation situated at Roorkee being shop No. 18/5 Mundra House, Roorkee. The petitioner is a tenant of the shop. The landlord has filed an application for release of the premises for establishing the consultancy business with regard to installing machines of plastic industry.

The Prescribed Authority vide his order dated 18.1.2001 allowed the application and released the shop in favour of respondent No.2. Aggrieved by the aforesaid order, the petitioner has filed an appeal under section 22 of U.P. Act No. XIII of 1972.

During the pendency of the appeal, petitioner has filed an application under Section 34 (g) read with Rule 22 (d) of U.P. Act No.XIII of 1972 praying for amendment in the written statement as well as in the grounds of appeal. The said application was opposed on

the ground that the sale agreement has nothing to do with the disputed premises sought to be released and further the same has no bearing with the present release of the shop.

The amendment application has been rejected by the Prescribed Authority hence, the present writ petition has been filed.

I have heard Sri B.S. Verma learned counsel for the petitioner and Sri Sharad Sharma, counsel for the respondent. After hearing both the parties the following point needs to be decided in the present writ petition.

"Whether an amendment which is in the nature of the subsequent event can be allowed in proceedings under section 21 of the Act."

The power to allow amendment is contained under Rule 22 (d) as well as Section 34 (g) of U.P. Act No. 13 of 1972. However, the provisions of Order 6 Rule 17 of the Code of Civil Procedure will apply so far as guide line is concerned. The intention of Order 6 Rule 17 is to permit the amendment, which may be 'necessary for the purpose of determining the real question in controversy between the parties.'

The intention of the legislature as contained under Order 6 Rule 17 C.P.C. is to allow the amendment in order to clear the pleadings and not to introduce a new case between the parties. The amendment, therefore, cannot be allowed to introduce a new cause of action.

The Prescribed Authority has allowed the application under section 21 (1) (a) of the Act. In the appeal an application for amendment has been filed. Therefore, the amendment cannot be permitted in the present case on account of a settled principles of law that the need of the landlord has to be decided on the date of the filing of the application. The normal rule is that the rights and obligations of

the parties have to be adjudicated on the basis of commencement of the *lis.*

In the case *Gaya Prasad vs. Pradeep Srivastava 2201 (1) ARC (SC) 352* after relying upon the judgment of Ramesh Kumar vs. Keshav Ram 1992 Supplement (2) SCC 623, it has been held as under:

"We have no doubt that the crucial date for deciding as to the bona fide of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post-petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow process system subsists ……

……..

We cannot forget that while considering the bona fide of the need of the landlord the crucial date is the date of petition. In Ramesh Kumar v. Kesho Ram 1992, Suppl. (2) SCC 623: 1992 SCFBRC 322, a two Judge Bench of this Court (M.N. Vekatachalia, J; as he then was, and N.M. Kasliwal, J.) pointed out that the normal rule is that rights and obligations of the parties are to be determined as they were when the lis commenced and the only exception is that the Court is not precluded from moulding the relief appropriately in consideration of subsequent events provided such events had an impact on those rights and obligations. What the learned Chief Justice observed therein is this:

"The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the

entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the Court is not precluded from taking a cautions coginsance of the subsequent change of fact and law to mould the relief".

However, the Apex Court (supra) has made an exception as mentioned in paragraph 13 of the Judgment the same is quoted below:

In our opinion, the subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events. A three Judge Bench of this Court in ***Pasupuleti Venkateswarlu v. Motor and General Traders, 1975 (1) SCC 770,*** *which pointed to the need for re-moulding the reliefs on the strength of subsequent events affecting the cause of action in the filed of rent control litigation, forewarned that cognizance of such subsequent events should be taken very cautiously. This is what learned Judges of the Bench said then:-*

"We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can and in many cases must, take cautious cognizance of the events and developments subsequent to the institution of the proceedings provided the rules of fairness to both sides are scrupulously obeyed."

Suffice it to state that the subsequent event can be safely placed under the principles contained under Order 41 Rule 27 C.P.C. read with section 10 of U.P. Act 13 of 1972. Sub clause (2) of Section 10 reads as under:-

(2) The appellate authority may confirm, vary or rescinded the order, or remand the case to the District Magistrate for rehearing, and may also take any additional evidence, and pending its

decision, stay the operation of the order under appeal on such terms, if any, as it thinks fit."

In *Ramesh Chandra vs. District Judge, Bijnor and antoher, 1997 ARC 435* has relied upon the judgment of Gur Narain Jagat Narain and Co. vs. M/S Motor and General Sales Pvt. Ltd and others, 1977 UPRCC 50 has held as under:

"While disposing of an application for additional evidence under Section 10 (2) of the Act, the District Judge should take guidance by the provisions contained in Order XLI Rule 27 of the Civil Procedure Code."

In Gaya Prasad's case (supra) the Apex Court has considered the subsequent events and has observed as under:

"Considering all the aforesaid decisions, we are of the definite view that the subsequent events pleaded and highlighted by the appellant are too insufficient to overshadow the bona fide need concurrently found by the fact finding Courts."

In 2000 (2) ARC 761, Chetan Prakash vs. Civil Judge (SD) Hapur and another, Allahabad High Court has permitted the filing of the supplementary affidavit. The observations are quoted below:

"It has been urged by the learned Counsel for the petitioner that for the purposes of present case, it was necessary to amend the written statement as in the similar facts and circumstances, it has been stated that the suits and release applications were filed by the landlady,. Respondent No.2 and wee ultimately, no pressed or withdrawn after the rent was enhanced. In the written statement, the petitioner has already pleaded that the need of Respondent no.2, the landlady was not genuine. In support of that, petitioner could file affidavit stating all those facts, which were sought to be brought on record by means of amendment. The amendment of written statement was, therefore, not necessary for resolving the controversy involved in

the case. The petitioner can still file supplementary affidavit in support of his case. If such an affidavit is filed same shall be taken on record and shall be considered at the time of hearing of the case."

The Apex Court has not permitted the amendment as it was inconsistent as held in *2001 (1) ARC 310, Narsimha Reddy vs. Rondla Narsi Reddy and others.* Relevant paragraphs are quoted below:

"When we turn to the proposed amendment it recites that there was no earlier partition and the said document was sham and bogus and was also not signed. In support of that the first part of paragraph 5(A), sought to be introduced, tries to aver about the relevant evidence in this connection. So far as that is concerned in the impugned judgment itself the High Court has given liberty to the petitioner to lead evidence and take all possible pleas in connection with admissibility of the document as well as about the relevant evidence in this connection. So far as that is concerned in the impugned judgment itself the High Court has given liberty to the petitioner to lead evidence and take all possible pleas in connection with admissibility of the document as well as about the subsequent events, how the document is to be interpreted and considered.

So far as the second part of the proposed amendment in paragraph 5(A) is concerned, it is to the effect that the plaintiff is ready and willing to pay to defendant Nos. 1 and 2, Rs. 1,500/- as contemplates under the said deed of partition. This averment is contrary to the entire stand of the plaintiff and is rightly held to be inconsistent and could not have been relied upon in these proceedings as the document is of 1974 while the suit is filed in 1993. Therefore, there was no question of relying upon the averment in the document in favour of the plaintiff when the plaintiff himself says that the

document is invalid. Consequently, no case is made out for our interference."

Taking into consideration of the judgment of Apex Court, suffice it to state that the amendment sought to be introduced is like a subsequent event. Application under section 21 (1) (a) was filed in the year 1997. The amendment sought relates to the year 2001 as will appear from the amendment of para 34 B. Being a subsequent event it can be brought by filing an affidavit in accordance with law.

In the light of the observations made above the writ petition is dismissed.

(Rajesh Tandon, J.)

27.8.2003

*Dhyani